

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1300

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee, Senators Garcia and Bullard

SUBJECT: Consumer Services

DATE: April 9, 2004                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable</u>
3.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/1 amendment</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This Committee Substitute revises various provisions in law relating to recovery and repossession, to include:

- Expanding the definition of “repossession” in ch. 493, F.S., to include recovery of an aircraft, personal watercraft, all-terrain vehicle, farm equipment, and industrial equipment as defined in the committee substitute. The expanded definition will require individuals who currently legally repossess those items without a license to obtain a license from the Department of Agriculture and Consumer Services.
- Removing the current exemption, and thereby making all recovery agents subject to provisions in law governing repossession services.
- Revising the licensee insurance requirement to limit its provisions solely to a security agency (Class “B” licensee), who must now obtain commercial general liability coverage instead of comprehensive general liability coverage.
- Conforming the section on grounds for disciplinary action against a recovery agency, recovery agent, or recovery agent intern to the expanded definition of “repossession” created by the committee substitute.

This committee substitute substantially amends the following sections of the Florida Statutes: 493.6101, 493.6102, 493.6110, and 493.6118.

## II. Present Situation:

### *Repossession and Security Services*

Under ch. 493, F.S., the Department of Agriculture and Consumer Services (Department) regulates repossession, private security, and private investigative services. The definition of “repossession” includes the recovery of a motor vehicle, mobile home, or motorboat. A repossession may be made by an authorized individual who may recover, or collect money in lieu of recovery, a motor vehicle, mobile home, or motorboat that has been sold or leased under a security agreement that contains a repossession clause. When a licensed recovery agent is in control, custody, and possession of a motor vehicle, mobile home, or motorboat, a repossession is complete.<sup>1</sup> However, repossession involves more than regaining control of a vehicle for a lienholder.<sup>2</sup> Courts have interpreted the definition of repossession to be broad enough to include locating or conducting surveillance to find the vehicle.<sup>3</sup> Preparing an inventory of the personal property in the repossessed vehicle and notifying, by certified mail, the debtor of the intent to dispose of the personal property are also part of the repossession process.<sup>4</sup>

A recovery agent is defined as “any individual who, for consideration, advertises as providing or performs repossessions.”<sup>5</sup> Anyone who performs the services of a recovery agent must have a Class “E” license.<sup>6</sup> A recovery agent intern under the direction and control of a sponsoring Class “E” licensee must have a Class “EE” license.<sup>7</sup> A recovery agency means “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.”<sup>8</sup> Anyone who operates a recovery agency must have a Class “R” license, which is only valid for one location.<sup>9</sup>

A security agency means “any person who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners.” The definition includes any person who uses dogs and individuals to provide security services.<sup>10</sup> In order to operate a security agency, a person, firm, company, partnership, or corporation must obtain a Class “B” license, which is only valid for one location.<sup>11</sup>

### *Exemptions*

Certain individuals are exempt from the provisions of ch. 493, F.S., such as local, state, and federal law enforcement officers, licensed insurance investigators, and individuals solely, exclusively, and regularly employed as unarmed investigators or recovery agents “in connection

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<sup>1</sup> Section 493.6101(22), F.S.

<sup>2</sup> Department of Agriculture and Consumer Services, Div. of Licensing, *Legal Opinion 96-29* (revised 2/6/97), available at <http://licgweb.doacs.state.fl.us/opinions/96-29.html>

<sup>3</sup> *Rod's Recovery Agency v. Dep't of State, Div. of Licensing*, 606 So.2d 458, 459 (Fla. 1st DCA 1992).

<sup>4</sup> Section 493.6404(1) & (2), F.S.

<sup>5</sup> Section 493.6101(21), F.S.

<sup>6</sup> Section 493.6401(4), F.S.

<sup>7</sup> *Id.* at (5).

<sup>8</sup> *Id.* at (20).

<sup>9</sup> Section 493.6401(1), F.S.

<sup>10</sup> Section 493.6101(18), F.S.

<sup>11</sup> Section 493.6301(1), F.S.

with the business of his or her employer, when there exists an employer-employee relationship.”<sup>12</sup>

### ***Insurance Requirements and Discipline***

Any license described in ch. 493, F.S., may not be issued unless the applicant files with the Department a certificate of insurance showing certain information and coverages. The insurance must have a provision showing the department as a named additional insured for the purpose of receiving all notices of modification or cancellation of the insurance and must include coverage in the amount of at least \$300,000. The insurance must also include comprehensive general liability coverage for death, bodily injury, property damage, and personal injury. Additionally, the insurance must also include coverage for false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, and violation of the right of privacy.<sup>13</sup>

The department may discipline licensees under ch. 493, F.S. Grounds for disciplinary action include:

- Fraud or willful misrepresentation in applying for or obtaining a license.
- A finding that the licensee or any employee is guilty of willful betrayal of a professional secret or any unauthorized release of information acquired as a result of activities regulated under this chapter.
- Proof that the applicant or licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of the activities regulated under this chapter.
- Conducting activities regulated under this chapter without a license or with a revoked or suspended license.<sup>14</sup>

In addition to the grounds for disciplinary action listed above, Class “R” recovery agencies, Class “E” recovery agents, and Class “EE” recovery agent interns are prohibited from committing certain acts, such as:

- Recovering a motor vehicle, mobile home, or motorboat that has been sold under a conditional sales agreement or under the terms of a chattel mortgage before authorization has been received from the legal owner or mortgagee.
- Charging for expenses not actually incurred in connection with the recovery, transportation, storage, or disposal of a motor vehicle, mobile home, motorboat, or personal property.
- Using any motor vehicle, mobile home, or motorboat that has been repossessed, or using personal property obtained in a repossession, for the personal benefit of a licensee or an officer, director, partner, manager, or employee of a licensee.<sup>15</sup>

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<sup>12</sup> Section 493.6102(1)-(3), F.S.

<sup>13</sup> Section 493.6110, F.S.

<sup>14</sup> Section 493.6118(1)(a) & (e)-(g), F.S.

<sup>15</sup> *Id.* at (1)(u)1.-3., F.S.

### III. Effect of Proposed Changes:

The committee substitute expands the definition of “repossession” in s. 493.6101(22), F.S., to add recovery of an aircraft as defined in s. 330.27(1), F.S., a personal watercraft as defined in s. 327.02, F.S., an all-terrain vehicle as defined in s. 316.2074, F.S., farm equipment as defined in s. 686.402, F.S., or industrial equipment. Industrial equipment is defined to include, but is not limited to, tractors, road rollers, cranes, fork lifts, backhoes, bulldozers, and other vehicles that are propelled by power other than muscular power, and used in the manufacture of goods and services. This change in the definition of repossession will require unlicensed individuals who legally repossess the items listed above to obtain a license from the Department of Agriculture and Consumer Services.

The committee substitute removes the exemption from the provisions of ch. 493, F.S., for any individual solely, exclusively, and regularly employed as a recovery agent in connection with the business of her or his employer, when there exists an employer-employee relationship. This change may require individuals who act solely as recovery agents while in the employ of auto dealerships and other businesses to become licensed recovery agents.

The committee substitute limits the scope of s. 493.6110, F.S., regarding required licensee insurance, to a Class “B” license holder, which is a security agency. A Class “B” license holder must provide the department a certificate of insurance showing commercial general liability coverage. The committee substitute removes the requirement for comprehensive general liability coverage and removes several specific areas, such as false arrest, detention or imprisonment, malicious prosecution, libel, slander, and defamation of character, which the comprehensive general liability insurance is required to cover under the current statute. The Department indicates that the statutory insurance requirement is unnecessary because the private investigative and repossession services industries already require much higher insurance coverage than is required by the current statute. According to the Department, the security service industry requested that the Department maintain the insurance requirement for Class “B” license holders, which are security agencies.

The committee substitute conforms s. 493.6118(1)(u), F.S., regarding grounds for discipline of Class “R” recovery agencies, Class “E” recovery agents, and Class “EE” recovery agent interns to the newly expanded definition of repossession created by the committee substitute.

The committee substitute takes effect October 1, 2004.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unlicensed individuals who repossess aircraft, personal watercraft, all-terrain vehicles, farm equipment, and industrial equipment and individuals who act exclusively as recovery agents for auto dealerships and other businesses will have to obtain a license from the Department of Agriculture and Consumer Services under the committee substitute. The current fees are as follows: \$75-recovery agent license; \$60-recovery agent intern license; and \$450-recovery agency license.<sup>16</sup>

Currently, individuals employed solely and exclusively by used auto dealerships, banks and credit unions are exempt from licensing requirements and operational standards of Chapter 493, and are therefore operating outside the regulatory guidelines contained in law. This committee substitute may provide greater protection to consumers, as more recovery agents will now need to be licensed, and will be subject to the provisions of Chapter 493.

C. Government Sector Impact:

If the committee substitute passes, the department will incur the expense of processing additional applications for licenses.

**VI. Technical Deficiencies:**

It is unclear whether all or only some of the items enumerated as “industrial equipment” under the bill fall within the limitation of “used in the manufacture of goods and services.” If so, the scope of the bill is restricted.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Judiciary:

Clarifies that industrial equipment includes other vehicles propelled by power, other than muscular power, that are used in the manufacture of goods or used in the provision of services.

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<sup>16</sup> Section 493.6402(1)(a), (d), & (e), F.S.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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